

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAR 27 2008

COURT OF APPEALS
DIVISION TWO

LYNDA S.,

Appellant,

v.

ARIZONA DEPARTMENT OF
ECONOMIC SECURITY,
CASSIDY R., and NATHAN R.,

Appellees.

2 CA-JV 2007-0090
DEPARTMENT A

MEMORANDUM DECISION

Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17629800

Honorable Ted B. Borek, Judge

AFFIRMED

Belinda B. BreMiller

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Dawn R. Williams

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

H O W A R D, Presiding Judge.

¶1 Appellant Lynda S. challenges the juvenile court's order terminating her parental rights to her children, Cassidy and Nathan, following a contested termination hearing. She contends that the evidence was insufficient to prove any of the statutory

grounds for termination on which the court based its decision and that the court abused its discretion by denying her motion to continue the hearing.

¶2 We discuss the motion to continue first. “Motions to continue are addressed to the sound discretion of the trial court[,] and its decision will not be reversed absent a clear abuse of discretion.” *In re Yavapai County Juv. Action No. J-9365*, 157 Ariz. 497, 499, 759 P.2d 643, 645 (App. 1988). Shortly before the second day of the termination hearing, Lynda filed a motion to continue, claiming she was experiencing severe abdominal pain and was thus unable to effectively aid her attorney in representing her. She attached to the motion a letter from her treating nurse practitioner asking that she be excused from court because of pain “due to severe dyspepsia or reflux.” The juvenile court addressed the motion on the second day of the hearing and stated that, although “illness is something that would normally be a ground” to continue, the court was “not satisfied based on the information . . . in th[e] letter” that a continuance was warranted.

¶3 Nonetheless, the juvenile court allowed Lynda to present evidence about why she thought a continuance was necessary and recessed to allow her to contact her nurse practitioner. Following the recess, the nurse practitioner testified that he had seen Lynda approximately a week earlier for complaints of abdominal pain that she told him occurred primarily when she was in the courtroom. He had not yet completely evaluated her but had diagnosed her preliminarily with dyspepsia or gastric esophageal reflux based on her statements. He had given her medication and told her to follow up in one to two weeks.

When asked whether he believed Lynda was “medically able to sit through a day of trial,” he stated he could not “really answer that question at this particular point in time.”

¶4 The juvenile court denied the motion to continue based, at least in part, on its own observation of Lynda. The court stated that, although it did not “disbelieve [she was] having some gastronomical [sic] pain,” given the timing of her complaints and her demeanor on and off the stand, the court did not consider Lynda’s situation severe enough to warrant a continuance. Given the court’s superior ability to observe and evaluate the testimony and demeanor of witnesses, we cannot disagree with its conclusion. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002) (as trier of fact in termination proceeding, juvenile court in “best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings”). An abuse of discretion is “an exercise of discretion which is manifestly unreasonable, exercised on untenable grounds or for untenable reasons.” *Williams v. Williams*, 166 Ariz. 260, 265, 801 P.2d 495, 500 (App. 1990). We find no abuse of discretion in the court’s decision denying Lynda’s motion to continue.

¶5 Regarding Lynda’s claim of insufficiency of the evidence, we view the evidence in the light most favorable to upholding the juvenile court’s findings. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). We do not re-weigh the evidence but determine only whether any reasonable evidence supports the termination order. *See id.* We will not disturb a court’s order terminating a parent’s rights unless the order is clearly erroneous. *Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205. Any statutory

ground that is the basis for termination of a parent's rights must be established by clear and convincing evidence. A.R.S. § 8-537(B); *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 25, 971 P.2d 1046, 1051 (App. 1999). And if clear and convincing evidence supports any one of the statutory grounds on which the court ordered termination, we need not consider claims pertaining to the others. *See Mary Ellen C.*, 193 Ariz. 185, ¶ 26, 971 P.2d at 1051. A court's finding that termination is in a child's best interests must be supported by a preponderance of the evidence. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005).

¶6 In this case, the juvenile court terminated Lynda's parental rights based on four statutory grounds: abuse or neglect pursuant to § 8-533(B)(2), mental illness or deficiency pursuant to § 8-533(B)(3), and length of time in care pursuant to § 8-533(B)(8)(a) and (b). On appeal, although Lynda challenges the sufficiency of evidence supporting the court's ultimate conclusions that these grounds were established, she has not challenged any of the court's specific factual findings. Nor has she challenged the court's best-interests findings. Rather, she concedes that, because of her low intellectual functioning, "she is not able to independently parent." She contends only that "she could parent with the help of the children's father and her mother" and argues that the Arizona Department of Economic Security "did not make diligent efforts to provide reunification services," presumably geared toward that end.

¶7 But it is uncontested that the father of Lynda's children is also her stepfather. Evidence was presented at the termination hearing that Lynda's stepfather had molested her

when she was fifteen years old and that Lynda's mother had failed to protect her at the time. The three continued to live together and, although convincing evidence was presented at the termination hearing that Cassidy had also been molested by her father, neither Lynda nor Lynda's mother believed the molestation had taken place. Additional evidence supporting the juvenile court's factual findings on each of the statutory grounds it found for termination is explained in the court's detailed, thirteen-page minute entry ruling. Because the court has correctly and sufficiently explained its findings and conclusions, "we believe little would be gained by our further 'rehashing the trial court's correct ruling' in our decision." *Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *quoting State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Accordingly, we adopt the juvenile court's ruling and affirm its order terminating Lynda's parental rights to Cassidy and Nathan.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge